

501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96-422, as amended, if the individual was paroled into the United States:

(i) In the custody of a Federal, State or local law enforcement or prosecutorial authority, for purposes of criminal prosecution in the United States; or

(ii) Solely to testify as a witness in proceedings before a judicial, administrative, or legislative body in the United States.

[47 FR 30045, July 9, 1982, as amended at 47 FR 46494, Oct. 19, 1982; 52 FR 16194, May 1, 1987; 52 FR 48802, Dec. 28, 1987; 53 FR 17450, May 17, 1988; 61 FR 36611, July 12, 1996]

**§ 212.6 Nonresident alien border crossing cards.**

(a) *Use*—(1) *Nonresident alien Canadian border crossing card, Form I-185.* Any Canadian citizen or British subject residing in Canada may use Form I-185 for entry at a United States port of entry.

(2) *Mexican border crossing card, Form I-186 or I-586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I-186 or I-586, may be admitted under § 235.1(f) and (g) of this title if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall be issued Form I-94 if the alien is applying for admission from:

(i) A country other than Mexico or Canada, or

(ii) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(b) *Application.* A citizen of Canada or a British subject residing in Canada must apply on Form I-175 for a nonresident alien border crossing card, supporting his/her application with evidence of Canadian or British citizenship, residence in Canada, and two photographs, size 1½" x 1½". Form I-175 must be submitted to an immigration officer at a Canadian border port of entry. A citizen of Mexico must apply on Form I-190 for a nonresident alien border crossing card, supporting his application with evidence of Mexican citizenship and residence, a valid unexpired passport or a valid Mexican Form 13, and one color photograph

with a white background. The photograph must be glossy, unretouched and not mounted. Dimension of the facial image must be approximately one inch from chin to top of hair, and the applicant must be shown in ¾ frontal view showing right side of face with right ear visible. Form I-190 must be submitted to an immigration officer at a Mexican border port of entry or to an American consular officer in Mexico, other than one assigned to a consulate situated adjacent to the border between Mexico and the United States; however, Form FS-257 may be used in lieu of Form I-190 when the application is made to an American consular officer. If the application is submitted to an immigration officer, each applicant, regardless of age, must appear in person for an interview concerning eligibility for a nonresident alien border crossing card. If the application is submitted to a consular officer, each applicant, except a child under fourteen years of age, must appear in person for the interview. If the application is denied, the applicant shall be given a notice of denial with the reasons on Form I-180. There is no appeal from the denial but the denial is without prejudice to a subsequent application for a visa or for admission to the United States.

(c) *Validity.* Notwithstanding any expiration dates which may appear thereon, Forms I-185, I-186, and I-586, are valid until revoked or voided.

(d) *Voidance*—(1) *At port of entry.* Forms I-185, I-186 and I-586 may be declared void by a supervisory immigration officer at a port of entry. If the card is declared void, the applicant shall be advised in writing that he/she may request a hearing before an immigration judge to determine his/her admissibility in accordance with part 236 of this chapter and may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized under § 292.2 of this chapter, located in the district where the exclusion hearing is to be held. If the applicant requests a hearing, Forms I-185, I-186 and I-586 shall be held at the port of

entry for presentation to the immigration judge. If the applicant chooses not to have a hearing, the card shall be voided. The alien to whom the form was issued shall be notified of the action taken and the reasons therefore by means of form I-180 delivered in person or, if such action is not possible, by mailing the Form I-180 to the last known address.

(2) *Within the United States.* If the holder of a Form I-185, I-186 or I-586 is placed under deportation proceedings, no action to void the card shall be taken pending the outcome of the hearing. If the alien is ordered deported or granted voluntary departure, the card shall be voided by an immigration officer. In the case of an alien holder of a Form I-185, I-186 or I-586 who is granted voluntary departure without a hearing, the card may be declared void by an immigration officer who is authorized to issue an Order to Show Cause or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I-185, I-186 or I-586 may be declared void by a consular officer in Mexico or Canada if the card was issued in one of those countries.

(4) *Grounds.* Grounds for voidance of a Form I-185, I-186 or I-586 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; or that he/she has abandoned his/her residence in the country upon which the card was granted.

(e) *Replacement.* If a nonresident alien border crossing card has been lost, stolen, mutilated, or destroyed, the person to show the card was issued may apply for a new card as provided for in this section. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application for the replacement card. The holder of a Form I-185, I-186, or I-586 which is in poor condition because of improper production may be issued a new form without submitting fee or application upon surrendering the original card.

(f) *Previous removal or deportation; waiver of inadmissibility.* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of an alien who is inadmissible under paragraph (16) or (17) of section 212(a) of the Act is authorized if such

alien is in possession of a Mexican Non-resident Alien Border Crossing Card and he establishes that he is otherwise admissible as a nonimmigrant visitor or student except for his removal or deportation prior to November 1, 1956, because of entry without inspection or lack of required documents.

[30 FR 10184, Aug. 17, 1965, as amended at 34 FR 129, Jan. 4, 1969; 35 FR 3065, Feb. 17, 1970; 37 FR 7584, Apr. 18, 1972; 37 FR 8061, Apr. 25, 1972; 45 FR 11114, Feb. 20, 1980; 46 FR 25082, May 5, 1981; 48 FR 35349, Aug. 4, 1983; 60 FR 40068, Aug. 7, 1995]

#### § 212.7 Waiver of certain grounds of excludability.

(a) *Section 212(h) or (i)—(1) Filing procedure—(i) Immigrant visa or fiancé(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 with the director or immigration judge considering the application for adjustment of status.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(3) *Decision.* If the application is approved the director shall complete Form I-607 for inclusion in the alien's